

SUBJECT: Recovering overpayments from the Crime Victim's Compensation Fund

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Peña, Riddle, Escobar, Mallory Caraway, Pierson, Talton
1 nay — Hodge
2 absent — Vaught, Moreno

SENATE VOTE: On final passage, April 19 — 31-0, on Local and Uncontested Calendar

WITNESSES: For — None
Against — None
On — (*Registered, but did not testify:* Gene McCleskey, Office of the Attorney General)

BACKGROUND: The Crime Victims' Compensation Act calls for the Office of the Attorney General to administer the Crime Victim's Compensation (CVC) fund, which awards compensation to victims of crimes or families of victims who have sustained monetary losses as a result of personal injuries or deaths. Money in the fund comes primarily from court costs and fees imposed on criminal offenders.

DIGEST: SB 1203 would add Code of Criminal Procedure, art 56.56 to establish procedures for overpayments to eligible recipients of the CVC fund. The bill would require the attorney general to issue a report laying out facts that supported a determination of overpayment. The attorney general would have to provide written notice to a subject person and include a summary of the overpayment, supporting documentation, opportunity for a payment plan, and explanation of the right to a hearing regarding the determination and amount of overpayment.

Within 45 days of receiving notice, the implicated person would have to submit a full repayment of the amount owed, a written acceptance of the payment plan detailed in the notice, or a request for an administrative

hearing. If the person requested a hearing, a hearing officer would make a finding of fact and issue a proposal for a decision to the attorney general. Based on the proposal, the attorney general could order a cancellation of the claim or affirm the overpayment and set the amount to be repaid. Such an order would be subject to further judicial review. The attorney general could arrange for collecting an overpayment as a debt through the Comptroller's Office if a person did not exercise any of the options set forth in a repayment notice.

Within 30 days of the finalization of an attorney general's order, a person would have to pay any ordered repayment or petition for judicial review. If a person elected to contest an order and remit no payment, the person could arrange to pay the amount of the ordered repayment through an escrow or bond or file an affidavit certifying an inability to pay and request the court to stay enforcement. Any payments made initially and overturned in court would be repaid by the Attorney General's Office, with interest.

In addition to the ordered repayment, the attorney general would be authorized to recover expenses incurred in the investigation and prosecution of the suit to collect it.

The bill would take effect September 1, 2007.

**SUPPORTERS
SAY:**

SB 1203 would strengthen and formalize overpayment collection procedures already utilized by the attorney general in administering the CVC program. The CVC fund is the "payer of last resort" for healthcare claims submitted by crime victims. CVC funds are available after other available medical funding options have been exhausted, such as personal insurance policies, Medicare, and Medicaid. In rare cases, a claimant's insurance status is unknown at the time of registering for medical treatment. In this instance, the medical service provider may request compensation through the CVC program and later be informed that a patient also was covered by a primary insurance provider. In these cases, funds dispensed through the CVC program are considered overpayments, because the insurance provider primarily is obligated to cover the costs of medical care.

The attorney general has been taking actions to recover these overpayments with little statutory guidance. Existing provisions do not specify procedures for contesting a determination of overpayment or the

amount due. SB 1203 would outline a detailed process through which the attorney general could take action to collect overpayments issued from the CVC fund. The bill would introduce a clear, fair process through which subject parties could contest a determination issued by the attorney general. Subject parties would be entitled to an administrative hearing regarding the determination and further could contest an overpayment claim in court. Appeal proceedings would be structured to accommodate parties who were not able to pay the contested determination upfront.

SB 1203 would help the attorney general resolve rare problems resulting from circumstances surrounding emergency care. The CVC program is committed to making prompt payments for services delivered to ensure treatment and maintain good faith among service providers. A certain number of overpayment cases are inevitable due to imperfect information and slow claim processing on the part of primary insurance companies. Insurance policies also may be adopted that apply payments for retrospective claims.

A certain number of overpayments are inevitable. SB 1203 would provide fair and clear standards for the attorney general to reclaim overpayments and reapply these funds back to the CVC program where they could be used to help other victims.

**OPPONENTS
SAY:**

SB 1203 would not address the core factors that contribute to CVC overpayments. Overpayments result largely from a lack of coordination and communication among insurance providers, medical service providers, and the CVC program. Instead of focusing on procedures the attorney general could pursue to reclaim overpayments, legislation should focus on correcting the problems that give rise to overpayments from the start.

**OTHER
OPPONENTS
SAY:**

SB 1203 would allow a person who had been notified of a CVC overpayment the choice between paying the determined amount, accepting the attorney general's approved incremental repayment plan, or requesting an administrative hearing. The bill, however, is not specific about what type of payment plan would be available to a person subject to an overpayment determination. It would establish detailed procedures governing contestation proceedings, but is not very specific about alternative options. The bill should contain greater specificity to ensure that a payment plan offered by the attorney general was fair and consistent with plans adopted by other agencies. The bill also should clarify that a

court could order a person to pay *reasonable* expenses related to investigation and claims proceedings.